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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,168	09/19/2003	Fred C. Porter	6978-254/COA	1627
27572	7590	07/25/2005	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			HO, HA DINH	
			ART UNIT	PAPER NUMBER
			3681	

DATE MAILED: 07/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/667,168

Applicant(s)

PORTER, FRED C.

Examiner

Ha D. Ho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-14, 16-19, 21-24 and 26-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27 and 32-34 is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11, 14, 16, 17, 19, 21-24, 26, 28 and 30 is/are rejected.
- 7) ☒ Claim(s) 12, 13, 18, 29 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. This Office Action is responsive to Amendment filed on 05/23/05. Claims 1-7, 9-14, 16-19, 21-24 and 26-34 are currently pending.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-7, 9-11, 14, 16-17, 19, 21-24, 26, 28 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Bowen et al. (US 6,589,128).

Bowen et al' 128 shows a hybrid vehicle comprising:

a primary power source or a powertrain (12); a transmission (14); a rear driveline including a rear differential (24) connecting a pair of rear wheels (22); a front driveline including a front differential (34) connecting a pair of front wheels (32 (see Fig. 1);

a transfer case (16) (see Figs 1 and 2) including a rear output shaft (30), a front output shaft (40), a reduction gearset (58) having an input (114), an output (120), and an electric motor (68);

a mode clutch (66) and a clutch operator (214A);

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a control system (42) for controlling actuation of the mode clutch and the electric motor, the control system including a controller (48) and sensors (314-320); and

a transfer unit (180, 182, 186);

wherein said control system is operable to define an two-wheel/four-wheel electric operating mode when the electric motor is actuated to drive the front output shaft (40) while the rear output shaft (30) is not driven by the primary power source or powertrain (see Fig. 11A, and col. 10, lines 4-11);

wherein a hybrid or two-wheel/four-wheel drive hybrid operating mode is established when the primary power source or powertrain drives the rear output shaft (30) and the electric motor is actuated to drive the front output shaft (40) (see Fig. 11B, and col. 10, lines 4-11);

wherein an two-wheel/four-wheel engine operating mode is established when the electric motor is off and the primary power source or powertrain drives the rear output shaft (30) (see Fig. 11C, and col. 10, lines 4-11);

Allowable Subject Matter

4. Claims 12, 13, 18, 29 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claims 27 and 32-34 are allowed.

Response to Arguments

6. Applicant's arguments filed 05/23/05 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *the electric motor drives the front wheels independently of the drive torque transferred by the powertrain to the rear wheels*, page 18, lines 12-14) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant further argues that "*the Bowen '128 patent does not teach an arrangement capable of establishing an electric mode where the electric motor drives the front output shaft with no power delivered to the rear output shaft via the powertrain*" (page 19, lines 7-10).

Examiner disagrees. Note that Bowen '128 shows an arrangement capable of establishing an electric mode (see Fig. 11A) where no power is delivered to the rear output shaft 30 via the powertrain 12 since the powertrain is stopped in this mode (see col. 9, lines 31-32), and where the electric motor 68 drives the front output shaft 40. This is so because the transfer clutch 66 can be engaged in this mode (see col. 10, lines 4-11) so that the power is transfer to the front output shaft 40 from the electric motor 68.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Communication

8. Submission of your response by facsimile transmission is encouraged. The fax phone numbers for the organization where this application or proceeding is assigned are **(703) 872-9306**. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see M.P.E.P. 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitting by facsimile transmission separately from the check. Responses submitted by facsimile transmission should include a Certificate of Transmission (M.P.E.P. 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to
the Patent and Trademark Office on _____

(Date)

Typed or printed name of person signing this certificate:

(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and M.P.E.P. 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ha D. Ho whose telephone number is 571-272-7091. If attempts

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to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on **571-272-7095**.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NEW CENTRAL FAX NUMBER

Effective July 15, 2005

10. On July 15, 2005, the Central FAX Number will change to **571-273-8300**. This new Central FAX Number is the result of relocating the Central FAX server to the Office's Alexandria, Virginia campus.

11. Most facsimile-transmitted patent application related correspondence is required to be sent to the Central FAX Number. To give customers time to adjust to the new Central FAX Number, faxes sent to the old number (703-872-9306) will be routed to the new number until September 15, 2005. After September 15, 2005, the old number will no longer be in service and **571-273-8300** will be the only facsimile number recognized for "centralized delivery".

12. **CENTRALIZED DELIVERY POLICY:** For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314), and facsimile transmissions must be sent to the Central FAX number, unless an exception applies. For example, if the examiner has rejected claims in a regular U.S. patent application, and the reply to the examiner's Office action is desired to be transmitted by facsimile rather than mailed, the reply must be sent to the Central FAX Number.

HDH
(703) 305-0738
July 13, 2005

Hla Hlo
HAHO
PRIMARY EXAMINER
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7/13/05